



Get that overpayment back! Collection processes available to a Washington self-insured employer

By Kendra M. Rychlick ■ April 20, 2018

Overpayments in Washington workers' compensation claims can arise in several ways, including situations in which provisionally paid time loss benefits were paid on a claim that was ultimately denied, benefits were paid pursuant to an adjudication which was later overturned, or the benefits were induced by willful misrepresentation.¹ Employers should review these options and laws below for an optimal recovery.

The self-insured employer may choose to waive an overpayment or work with the debtor to develop an agreeable repayment plan. Alternatively, an employer can recover the overpayment from future benefits due to the claimant such as time loss payments or permanent partial disability awards.² However, this is not always a reliable method for recoupment if the claim has been denied or closed, and there are no foreseeable future benefits from which to deduct the overpayment. In this case, the employer may wish to consider pursuing legal collection efforts to recover the overpayment.

The employer may either garnish a worker's wages or file a lien against property.³ The specific collection plan will vary case-by-case, and will depend upon the worker's current location, work status and property ownership.

In order to move forward with either a lien or garnishment, the self-insured employer must first request an overpayment order from the Department of Labor and Industries by submitting an SIF-5 with proof of payment.⁴ The Department order includes a conspicuous notice to the worker of the collection methods available to the employer.⁵ Unfortunately, a claimant is seldom willing or able to repay an overpayment directly upon issuance of the Department order.

The laws governing collections in Washington are complex due to the interplay of various federal and state statutes and regulations.⁶ Throughout the entire debt collection process, the employer should remain mindful of the protections imposed by the federal Fair Debt Collection Practices Act (FDCPA). The FDCPA mandates specific debt collection processes, including how and when debt collectors may communicate with a debtor.⁷ The FDCPA also outlines the written notice of debt and statement of debtor rights that a debt collector is required to provide to the debtor before commencing collection efforts.⁸

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Once the Department overpayment order becomes final and binding, and proper FDCPA notice is provided, the employer may file a warrant with the superior court clerk of the appropriate county in Washington.⁹ The clerk designates a superior court cause number that is entered in the judgment docket.¹⁰ The warrant then becomes a lien upon the title to and interest in all real property (real estate) or personal property (wages) of the worker against whom the warrant is issued, and is equivalent to a judgment in a civil case.¹¹ With the warrant in hand, the employer can then move forward to garnish a worker's wages or file a lien against the debtor's property.

While there are multiple options available for obtaining reimbursement for a workers' compensation overpayment, improper processes or a violation of the strict requirements of the FDCPA could subject the debt collector to serious penalties. Moreover, many unique situations can arise while collection efforts are ongoing, such as a debtor's bankruptcy, property foreclosure or probate of an estate. Each of these circumstances requires careful assessment of the specific statutory requirements and processes.

Due to the complexity of the collection process, Washington self-insured employers should consider seeking advice from a Reinisch Wilson Weier PC attorney when contemplating a demand for reimbursement of an overpayment for workers' compensation benefits. ■

¹ RCW 51.32.240(3), (4), & (5).

² RCW 51.32.240(1)(a).

³ RCW 51.32.240(6).

⁴ Washington State Department of Labor and Industries, "Overpayments," *Miscellaneous Claim Issues: Self-Insurance Claim Adjudication Guidelines*, (August 2015): 24.

⁵ RCW 51.32.240(7).

⁶ For example, federal acts addressing collections include: Fair Labor Standards Act, Fair Debt Collection Practices Act, and Federal Bankruptcy. Within Washington State, Revised Codes pertaining to collections include Recovery of Overpayments, Enforcement of Judgments, Garnishment and Wage Assignments, Conveyance of Real Property, Personal Property Liens and Probate and Trust Law.

⁷ 15 U.S.C. § 1692c.

⁸ 15 U.S.C. § 1692g.

⁹ RCW 51.32.240(6).

¹⁰Id.

¹¹Id.

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